

DEC 28 2007

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE LUIS FARIAS ALVAREZ; et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-74273

Agency Nos. A95-193-880
A95-193-881

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 3, 2007 **

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Jose Luis Farias Alvarez and Luisa Lorenzana Farias, husband and wife and natives and citizens of Mexico, petition for review of the decision of the Board of Immigration Appeals dismissing their appeal from the immigration judge's denial

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of their application for cancellation of removal, based on petitioners' failure to establish the requisite exceptional and extremely unusual hardship to their qualifying United States citizen children.

Petitioners contend that the IJ violated their due process rights in failing to accept new evidence of hardship, namely, a psychologist's report. Petitioners further contend that the BIA erred in concluding that the IJ did in fact consider the psychologist's report, and the BIA erred in failing to address the IJ's finding that the male petitioner failed to demonstrate good moral character.

This court lacks jurisdiction to review the BIA's discretionary determination that petitioners failed to demonstrate the requisite hardship. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005). Petitioners also fail to present a colorable due process claim. The BIA's determination that petitioners failed to establish hardship is dispositive of the male petitioner's cancellation of removal application, and it was unnecessary for the BIA to consider the IJ's good moral character finding. *See INS v. Bagmasmad*, 429 U.S. 24, 25 (1976). In addition, petitioners' argument that the agency did not consider the psychologist's report is not supported by the record.

PETITION FOR REVIEW DENIED.